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31 MAR 1978

MEMORANDUM FOR: Legislative Counsel

ATTENTION :

FROM :

Assistant for Information, DDA

SUBJECT : "Presidential Papers" Bills, H.R. 10998 and S. 2596

REFERENCE : Routing Sheet to AI/DDA from [redacted]  
dated 21 March 1978 re same subject

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1. We have reviewed the "Presidential Papers Act of 1978" and "Presidential Records Act of 1978" and in general have no problem with either of these bills with respect to the way we work with the Presidential libraries today. However, we do have a concern as to the protection and control of sensitive documents.

2. At the present time, classified CIA documents are stored at Presidential libraries. JFK and LBJ libraries also have CIA codeword documents which are stored in Office of Security-approved compartmented facilities. Under Executive Order 11652, all requests for access to the holdings of the libraries must be directed to the Archivist of the United States or the library directors. Requests for classified documents are accepted only for documents which are at least 10 years of age. Classified documents are sent to the originating agency for review and determination of releasability, and can be withheld on the grounds of classification only.

3. We are not particularly concerned about the "Archivist Axe" being applied to the destruction of CIA-originated records as we would still have the record copies in our own files.

4. The new legislation, if adopted, would, in effect, authorize the withholding of documents on grounds other than classification.

a. S. 2596 provides exemptions equivalent to FOIA exemptions (b)(1) and (b)(6). (In enunciating policy, subsection (b), it seems that material now exempted under FOIA exemption (b)(5) would be withheld up to 15 years after the President has left office.

b. H.R. 10998 provides exemptions equivalent to FOIA exemptions (b)(1), (b)(3), (b)(5) and (b)(6). After 50 years, only (b)(1) and (b)(3) would be available. This bill does not allow a waiting period prior to release.

5. The provisions of the "Presidential Papers" bills pose no problems for us, but they do not speak to our major concern. There have been instances of sensitive national security information made public as a result of scholarly work performed in Presidential libraries. We therefore ask the question: Should these bills be amended to prevent the co-location of sensitive documents with unclassified records? To ensure proper protection of sensitive documents, perhaps the documents should be returned to the originating agency, not stored with other Presidential materials. If such a return of documents is not possible, we would, at least, like to see an explicit statement in the law that the Archivist must send classified records to the originating agency for classification review.



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